

144074



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Mid-America Management Services, Inc.

**File:** B-244103

**Date:** June 5, 1991

Robert L. Gastreich for the protester.  
David J. Ervin, Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

The necessity for a business license in a particular state or locality is generally a matter between the contractor and the issuing authority (although it can be considered by the contracting officer in making a determination of responsibility) and will not be a bar to a contract award, absent a specific licensing requirement in the solicitation.

### DECISION

Mid-America Management Services, Inc. protests the award of a contract to CS&R Checkmate Consulting Inc. under request for proposals (RFP) No. MS-91-R-0002, issued by the Department of Justice, Marshals Service, for the management and disposal of seized real property in the Northern District of Illinois. Mid-America argues that the awardee is not qualified since it does not have a real estate broker's license, which is required under Illinois state law for any person or company who engages in the practice of real estate.

We dismiss the protest.

Normally, a general solicitation provision requiring a contractor to obtain all necessary licenses or to comply with all license requirements does not require that a bidder or offeror demonstrate compliance prior to award. Mercury Bus. Servs., Inc., B-237220, Nov. 7, 1989, 89-2 CPD ¶ 443. Rather, such requirements impose on successful bidders and offerors the obligation to resolve with state and local authorities questions of what licenses are required and to obtain those that are required. Id. In the absence of a specific licensing requirement in the solicitation, a contracting officer properly may make award without regard to whether the awardee is in compliance with state and local licensing

requirements. James C. Bateman Petroleum Servs. Inc. dba Semco, B-232325, Aug. 22, 1988, 88-2 CPD ¶ 170. Actual compliance with such requirements need only be met by the start of performance. Chemical Compounding Corp., B-227333, June 15, 1987, 87-1 CPD ¶ 596. Since the solicitation in the present case contained a general licensing requirement only and did not expressly require offerors to obtain necessary licenses prior to award, the awardee's alleged lack of licenses was not a bar to contract award. Mercury Bus. Servs., Inc., B-237220, supra.

Contracting officers may consider the lack of a state or local license where they determine that enforcement attempts by the state or local authority are a reasonable possibility and such enforcement attempts could interrupt and delay contract performance. Id. In such cases, the licensing issue is considered as part of the contracting officer's determination of the offeror's responsibility. Id. Because a responsibility determination--i.e., whether a bidder or offeror is capable of performing a contract--is based in large measure on subjective judgments, which are generally not readily susceptible of reasoned review, an agency's affirmative determination of responsibility will not be reviewed by our Office absent a showing of possible fraud or bad faith on the part of the procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. Bid Protest Regulations, 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. § 21.3(m)(5)); Computer Support Sys. Inc., B-239034, Aug. 2, 1990, 69 Comp. Gen. \_\_\_, 90-2 CPD ¶ 94. Since there is no showing of either fraud or bad faith and because a general license compliance provision is not a definitive responsibility criterion, see W.H. Smith Hardware Co., B-228576, Feb. 4, 1988, 88-1 CPD ¶ 110, we have no basis to review this protest.

The protest is dismissed.

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